



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

ROBERT W. SWANSON
ACTING DIRECTOR

Analysis of Enrolled House Bill 5320

Topic: Counting of Abstentions in Shareholder Votes
Sponsor: Representative Elsenheimer
Co-Sponsors: Representatives Huizenga, Vander Veen, Baxter, Wenke, Taub, Tobocman
Committee: House Commerce
Senate Economic Development, Small Business & Regulatory Reform
Date Introduced: October 18, 2005
Date Enrolled: March 2, 2006
Date of Analysis: Revised March 3, 2006

Position: The Department of Labor & Economic Growth is neutral on the bill.

Problem/Background:

Clarification is necessary in light of concerns expressed by some companies that ambiguities in counting votes is undesirable and can lead to unnecessary litigation. The changes in this bill and House Bill 5319 are modeled after provisions in the Model Act.

Description of Bill:

This bill makes it so that when shareholders abstain from a vote that their vote is not considered in the total number of votes cast on that action unless there is a limitation provided in their articles of incorporation. This only deals with the situation where the shareholders are voting as a class.

Arguments For:

It will now be easier for corporations to get proposals passed by the shareholders. It stops shareholders who do not take a position on the proposal from blocking it by abstaining.

Arguments Against:

Abstaining from a vote is important choice for shareholders and it is a statement by them also, stating that we are not sure; we need more information before we can make up our minds. If the vote is stalled because there is not a majority of votes for or against a proposal, it does not make it a bad thing just because not everybody is sure on the issue. This bill makes abstaining from a vote useless, unless the articles state that an abstention does count as a vote cast.

Supporters:

Business Law Section of the State Bar of Michigan

Opponents:

The only opposition to any of the bills in this package was to House Bill 5322. The Department of Labor & Economic Growth opposed House Bill 5322, because the problem that the bill was

designed to solve had already been addressed in the expedited fee bills.

Other Pertinent Information:

This bill is part of a package of bills (House Bills 5315-23) developed by the Business Law Section of the State Bar of Michigan as part of a regular review of Michigan's corporation laws. These reviews occur roughly at four-year intervals.

This bill is tie-barred to HB 5319.

Administrative Rules Impact:

The bill will have no administrative rules impact.

Fiscal Impact:

The bill will have no fiscal impact.